



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
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IN REPLY REFER TO
ACQ 021
19 Apr 99

MEMORANDUM FOR DISTRIBUTION

Subj: NAVFAC BASELINE CLAUSE 5252.246-9303, CONSEQUENCES OF
CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES (99-14)

Ref: (a) P-68 Subpart 11.5, Liquidated Damages

Encl: (1) Revised clause 5252.246-9303

1. Subsection 11.502(4) of reference (a) states "If Table 2 is used for Change of Occupancy requirements, the contract must state that the LD rate set forth in P-68 clause 5252.246-9303 does not apply to work covered by Table 2." Clause 5252.246-9303 has been revised to incorporate an ALT I for this requirement. ALT I may be used in family housing maintenance contracts to specify additional liquidated damages the Government may assess when a contractor fails to complete change of occupancy maintenance within the time period allowed. These liquidated damages compensate the Government for loss of quarters allowances (BAQ and VHA funds) when a resident cannot be moved into the unacceptable quarters.
2. Please ensure immediate dissemination of enclosure (1) to all appropriate personnel. The revised clause and prescriptions will be incorporated into the NAVFAC P-68 Contracting Manual found on the ACQ Online Homepage.

A handwritten signature in black ink, appearing to read "M. F. Howard", is positioned above the printed name.

MICHAEL F. HOWARD
Director, Strategic Programs/
Community Management Section

5252.246-9303 Consequences of Contractor's Failure To Perform Required Services. As prescribed in 46.407-100(a)(i), insert the following clause:

**CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM
REQUIRED SERVICES (MAR 1996)**

The Contractor shall perform all of the contract requirements. The Government will apply one or more of the surveillance methods mentioned below and will deduct an amount from the Contractor's invoice or otherwise withhold payment for unsatisfactory or nonperformed work. The Government reserves the right to change surveillance methods at any time during the contract without notice to the Contractor.

(a) **STATISTICALLY EXTRAPOLATED SURVEILLANCE METHOD.** The Government may apply a statistically extrapolated surveillance method (Random Sampling for Extrapolated Deductions) to any contract requirement to determine Contractor compliance. The defect rate will then be extrapolated to the monthly population to determine the number of unsatisfactorily performed work occurrences. The monthly population is the total number of work occurrences that are required to be performed during the month.

(b) **OTHER SURVEILLANCE METHODS.** The Government may apply other surveillance methods to determine Contractor compliance. These include, but are not limited to, 100% inspection, random sampling without extrapolated deductions, and planned sampling as primary surveillance methods; and incidental inspections and validated customer complaints as supplemental surveillance methods. When using these surveillance methods, deductions will be taken for all observed defects.

(c) **PROCEDURES.** In the case of unsatisfactory or nonperformed work, the Government:

(1) may give the Contractor written notice of observed deficiencies prior to deducting for unsatisfactory or nonperformed work and/or assessing liquidated damages. Such written notice shall not be a prerequisite for withholding payment for nonperformed work. The Government may specify, as provided for below, that liquidated damages can be assessed against the Contractor. Such liquidated damages are to compensate the Government for administrative costs and other expenses resulting from the unsatisfactory or nonperformed work.

(2) may, at its option, allow the Contractor an opportunity to reperform the unsatisfactory or nonperformed work, at no additional cost to the Government. In the case of daily work, corrective action must be completed within ____ hours of notice to the Contractor. In the case of other work, corrective action must be completed within ____ hours of notice. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the value of all observed defects. The original inspection results of the Contractor's work will not be modified upon reinspection. However, the Contractor will be paid for satisfactorily reperformed work.

(3) shall deduct from the Contractor's invoice all amounts associated with the unsatisfactory or nonperformed work at the prices set out in the Schedule or provided by other provisions of this contract, unless the Contractor is required to reperform and satisfactorily complete the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the value of all observed defects.

(4) may, at its option, perform the work by Government personnel or by other means. The Government will reduce the amount of payment to the Contractor, by the amount paid to any Government personnel (based on wages, retirement and fringe benefits) plus material, or by the actual costs incurred to accomplish the work by other means. If the actual costs cannot be readily determined, the prices set out

in the Schedule will be used as the basis for the deduction. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the computed cost.

(d) The Contractor is responsible for maintaining an effective Quality Control Program during the course of the contract. Failure to maintain adequate quality control may result in Termination for Default.

(e) Reperformance by the Contractor does not waive the Government's right to terminate for nonperformance in accordance with FAR clause 52.249-8, "DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)" of Section I and all other remedies for default as may be provided by law.

(f) When WATCHSTANDING SERVICES apply. If the Contractor fails to provide qualified personnel or allows any post to be unmanned for a total of _____ minutes in any shift, the Government may assign other persons to perform such work or deduct an amount from the Contractor's invoice as specified below:

(1) When Watchstanding Services are performed by Government employees, deductions shall be computed based on the current Federal Pay Schedule including wages, retirement and fringe benefits of the Government employees (civilian or military) who actually performed the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the computed cost.

(2) When non-performed Watchstanding Services are obtained under another contract, the Government will deduct from the Contractor's invoice an amount equal to the cost to the Government under that contract. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the cost.

(3) If no guard replacement is furnished by the Government and the work is not performed, the Government will deduct from the Contractor's invoice an amount equal to the cost to the Government of having a Government employee perform the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of _____ percent of the computed cost.

(4) The Contractor will be held liable for property losses sustained by the Government as a direct, consequential result of a failure to furnish the required personnel.

(5) Computations of the costs for Government employees to perform work not performed by the Contractor shall be in conformance with FAR 52.222-42, "STATEMENT OF EQUIVALENT RATE FOR FEDERAL HIRES." (End of clause)

ALTERNATE I (APR 1999) As prescribed in 46.407-100(a)(ii) and 11.502(4), for military family housing maintenance, the following paragraph (g) may be added to the basic clause:

(g) **CHANGE OF OCCUPANCY MAINTENANCE (COM).** In the event the contractor fails to complete change of occupancy maintenance within the number of days allowed, the Government may assess the COM liquidated damages shown below in addition to the liquidated damages set forth above. COM liquidated damages are based on the prevailing average daily Basic Allowance for Quarters (BAQ) with dependents, plus the average Variable Housing Allowance (VHA). Current applicable rates are shown below; however, actual charges shall be based on the prevailing rates in effect at the time.

COM LIQUIDATED DAMAGES

Type of Unit	LDs Per Calendar Day Per Quarters
F&GOQ (Flag & General Officers' Quarters	*
SOQ (Senior Officers' Quarters	*
FGQ (Field Grade Officers' Quarters	*
CGO (Company Grade Officers' Quarters	*
SE (Senior Enlisted Quarters)	*
JE (Junior Enlisted Quarters)	*

* Insert appropriate daily rates for each type of quarters listed.